

## Environmental Protection Agency

## § 222.7

(h) *Copies of notice sent to Food and Drug Administration.* In addition to the publication of notice required by paragraph (b) of this section, copies of such notice will be mailed to Food and Drug Administration, Shellfish Sanitation Branch (HF-417), 200 C Street SW., Washington, DC 20204.

(i) *Failure to give certain notices.* Failure to send copies of any public notice in accordance with paragraphs (c) through (h) of this section shall not invalidate any notice given pursuant to this section nor shall such failure invalidate any subsequent administrative proceeding.

(j) *Failure of consulted agency to respond.* Unless advice to the contrary is received from the appropriate Federal or State agency within 30 days of the date copies of any public notice were dispatched to such agency, such agency will be deemed to have no objection to the issuance of the permit identified in the public notice.

### § 222.4 Initiation of hearings.

(a) In the case of any permit application for which public notice in advance of permit issuance is required in accordance with paragraph (b) of § 222.3, any person may, within 30 days of the date on which all provisions of paragraph (b) of § 222.3 have been complied with, request a public hearing to consider the issuance or denial of, or the conditions to be imposed upon, such permit. Any such request for a public hearing shall be in writing, shall identify the person requesting the hearing, shall state with particularity any objections to the issuance or denial of, or to the conditions to be imposed upon, the proposed permit, and shall state the issues which are proposed to be raised by such person for consideration at a hearing.

(b) Whenever (1) a written request satisfying the requirements of paragraph (a) of this section has been received and the Administrator or Regional Administrator, as the case may be, determines that such request presents genuine issues, or (2) the Administrator or Regional Administrator, as the case may be, determines in his discretion that a public hearing is necessary or appropriate, the Administrator or the Regional Administrator,

as the case may be, will set a time and place for a public hearing in accordance with § 222.5, and will give notice of such hearing by publication in accordance with § 222.3.

(c) In the event the Administrator or the Regional Administrator, as the case may be, determines that a request filed pursuant to paragraph (a) of this section does not comply with the requirements of such paragraph (a) of this section or that such request does not present substantial issues of public interest, he shall advise, in writing, the person requesting the hearing of his determination.

### § 222.5 Time and place of hearings.

Hearings shall be held in the State in closest proximity to the proposed dump site, whenever practicable, and shall be set for the earliest practicable date no less than 30 days after the receipt of an appropriate request for a hearing or a determination by the Administrator or the Regional Administrator, as the case may be, to hold such a hearing without such a request.

### § 222.6 Presiding Officer.

A hearing convened pursuant to this subchapter H shall be conducted by a Presiding Officer. The Administrator or Regional Administrator, as the case may be, may designate a Presiding Officer. For adjudicatory hearings held pursuant to § 222.11, the Presiding Officer shall be an EPA employee who has had no prior connection with the permit application in question, including without limitation, the performance of investigative or prosecuting functions or any other functions, and who is not employed in the Enforcement Division or any Regional enforcement office.

[42 FR 2471, Jan. 11, 1977; 42 FR 6583, Feb. 3, 1977]

### § 222.7 Conduct of public hearing.

The Presiding Officer shall be responsible for the expeditious conduct of the hearing. The hearing shall be an informal public hearing, not an adversary proceeding, and shall be conducted so as to allow the presentation of public comments. When the Presiding Officer determines that it is necessary or appropriate, he shall cause a suitable record, which may include a verbatim

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transcript, of the proceedings to be made. Any person may appear at a public hearing convened pursuant to § 222.5 whether or not he requested the hearing, and may be represented by counsel or any other authorized representative. The Presiding Officer is authorized to set forth reasonable restrictions on the nature or amount of documentary material or testimony presented at a public hearing, giving due regard to the relevancy of any such information, and to the avoidance of undue repetitiveness of information presented.

### § 222.8 Recommendations of Presiding Officer.

Within 30 days following the adjournment of a public hearing convened pursuant to § 222.5, or within such additional period as the Administrator or the Regional Administrator, as the case may be, may grant to the Presiding Officer for good cause shown, and after full consideration of the comments received at the hearing, the Presiding Officer will prepare and forward to the Administrator or to the Regional Administrator, as the case may be, written recommendations relating to the issuance or denial of, or conditions to be imposed upon, the proposed permit and the record of the hearing, if any. Such recommendations shall contain a brief statement of the basis for the recommendations including a description of evidence relied upon. Copies of the Presiding Officer's recommendations shall be provided to any interested person on request, without charge. Copies of the record will be provided in accordance with 40 CFR Part 2.

[42 FR 2471, Jan. 11, 1977; 42 FR 6583, Feb. 3, 1977]

### § 222.9 Issuance of permits.

(a) Within 30 days following receipt of the Presiding Officer's recommendations or, where no hearing has been held, following the close of the 30-day period for requesting a hearing as provided in § 222.4, the Administrator or the Regional Administrator, as the case may be, shall make a determination with respect to the issuance, denial, or imposition of conditions on, any permit applied for under this Subchapter H and shall give notice to the

applicant and to all persons who registered their attendance at the hearing by providing their name and mailing address, if any, by mailing a letter stating the determination and stating the basis therefor in terms of the Criteria.

(b) Any determination to issue or deny any permit after a hearing held pursuant to § 222.7 shall take effect no sooner than:

(1) 10 days after notice of such determination is given if no request for an adjudicatory hearing is filed in accordance with § 222.10(a); or

(2) 20 days after notice of such determination is given if a request for an adjudicatory hearing is filed in accordance with paragraph (a) of § 222.10 and the Administrator or the Regional Administrator, as the case may be, denies such request in accordance with paragraph (c) of § 222.10; or

(3) The date on which a final determination has been made following an adjudicatory hearing held pursuant to § 222.11.

(c) The Administrator or Regional Administrator, as the case may be, may extend the term of a previously issued permit pending the conclusion of the proceedings held pursuant to §§ 222.7 through 222.9.

(d) A copy of each permit issued shall be sent to the appropriate District Office of the U.S. Coast Guard.

### § 222.10 Appeal to adjudicatory hearing.

(a) Within 10 days following the receipt of notice of the issuance or denial of any permit pursuant to § 222.9 after a hearing held pursuant to § 222.7, any interested person who participated in such hearing may request that an adjudicatory hearing be held pursuant to § 222.11 for the purpose of reviewing such determination, or any part thereof. Any such request for an adjudicatory hearing shall be filed with the Administrator or the Regional Administrator, as the case may be, and shall be in writing, shall identify the person requesting the adjudicatory hearing and shall state with particularity the objections to the determination, the basis therefor and the modification requested.